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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,757	11/02/2001	Joseph D. Franko SR.	QAL-30	9068
32863	7590	03/25/2004		
WALTER K. ROLOFF 490 HARBOR COURT SHOREVIEW, MN 55126			EXAMINER CARTER, MONICA SMITH	
			ART UNIT 3722	PAPER NUMBER 15
DATE MAILED: 03/25/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/005,757

Applicant(s)

FRANKO, JOSEPH D

Examiner

Monica S. Carter

Art Unit

3722

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 29 January 2004 and 19 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7-11 is/are pending in the application.
- 4a) Of the above claim(s) 11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 7-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Request for Continued Examination***

1. The request filed on January 29, 2004 for a Request for Continued Examination (RCE) under 37 CFR 1.114 based on parent Application No. 10/005,757 is acceptable and an RCE has been established. An action on the RCE follows.

### ***Election/Restrictions***

2. Newly submitted claim 11 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: Claim 11 is drawn to a method of providing an extended text label for a multi-use tube container which is distinct from the originally claimed invention of a combination of an extended text label and tube container.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claim 11 is withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### ***Drawings***

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the crimp closure portion must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 7-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Support for a "multiple-use" tube container could not be located in the specification.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 7-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 7, lines 1-2, there is an inconsistency between the language in the preamble and a certain portion or portions of the body of the claim, thereby making the scope of the claim indefinite and unclear. Applicant is required to clarify what subject

matter the claim is intended to be drawn to, i.e., either the subcombination of an extended text label alone or the combination of the extended text label and the tube container, and that the language of the claim be amended to be consistent with this intent. For the purpose of prosecution, the examiner considers the subject matter to be drawn to the combination.

In claim 7, line 2, it is not clear to the examiner if the "tube container" is the same container as the "multiple-use tube container" set forth in line 1 or a different container.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Garrill et al. (6,119,853).

Garrill et al. disclose a method and package for storing a pressurized container comprising an extended text label (55) (see col. 11, lines 24-38 – Garrill discloses providing a brochure, report, notice, pamphlet, or leaflet 65) for a tube container (22), wherein the tube container includes a product dispensing end (the examiner considers the dispensing end to be either end of the container) having a dispensing cap (the examiner considers the cap to be along the seams 32) and a filling end (the examiner

considers the filling end to be the end opposite the dispensing end) opposite the product dispensing end, the filling end including a crimp closure portion (32), wherein the label is securely joined to the tube container.

Inherently, the crimp closure portion would be crimped subsequent to filling the tube container with a selected product as it would be extremely difficult to fill the container after the container has been sealed.

Garrill et al. discloses the claimed invention except for the label being securely joined to the filling end of the container by way of the crimp closure portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made to position the label at any desired location on the container, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

10. Claims 8-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Garrill et al. in view of Hill et al. (5,074,595).

Garrill et al. disclose the claimed invention except for the label having a pliable attachment tongue extending outwardly from the label such that the tongue is securely joined to the filling end of the tube container at the crimp closure portion.

Hill, discloses a container (46) having an extended text label (20) attached to the container. The label includes a pliable attachment tongue (32) extending outwardly from the label (as seen in figures 4-6). Therefore, it would have been obvious to one having ordinary skill in the art at the time of the invention to modify, Garrill's invention by

replacing the extended text label with an extended text label having an outwardly extending tongue, as taught by Hill, to provide a covering over the label protecting the label from being damaged and/or torn.

Regarding the placement of the label (i.e., securely joined to the filling end of the tube container at the crimp closure portion), it would have been obvious to one having ordinary skill in the art at the time the invention was made to position the label at any desired location on the container, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

### ***Response to Arguments***

11. Applicant's arguments with respect to claims 7-10 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The cited references disclose extended text labels and containers having adhesively attached labels.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica S. Carter whose telephone number is (703) 305-

0305. The examiner can normally be reached on Monday-Thursday (7:00 AM - 4:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrea L. Wellington can be reached on (703) 308-2159. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

March 18, 2004

*Monica S. Carter*  
**MONICA S. CARTER**  
**PRIMARY EXAMINER**